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Office of
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In Reply
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AGC 1056

Colonel D. E. Dobson
Division Engineer
Huntsville Division, Corps of Engineers
Department of the Army
P.O. Box 1600 West Station
Huntsville, Alabama 35807

Dear Colonel Dobson:

This letter is in response to your letter concerning the decision in 43 Comp. Gen. 701 (1964) and the alleged inequity that has occurred from the operation of the rule set forth in that decision. You have asked that the Comptroller General reconsider that decision.

The statutory provisions establishing the decision making authority of the Comptroller General do not entitle you to a decision. See 31 U.S.C. 74 and 82d (1976). However, the following information may be helpful to you.

The Comptroller General has, on a number of occasions, reviewed the decision in 43 Comp. Gen. 701. The Civil Service Commission (now the Office of Personnel Management (OPM)) has disagreed with our interpretation of 5 U.S.C. 5334(b) regarding step increases on repromotion as being too restrictive. OPM's view is based on the fact that since an employee whose rate of pay on repromotion is the same as his retained rate he has not received any increase in actual pay, it is inequitable to regard this action as an equivalent increase.

In 1975, the period of time referred to in your letter, employees demoted as a result of a reduction in force were entitled to salary retention pursuant to 5 U.S.C. 5337 (1976). That section provided that under the conditions stated therein a General Schedule employee who is reduced in grade is entitled to basic pay including statutory increases, at the rate he was entitled to immediately before the reduction for a period of 2 years from the effective date of the reduction. Under this statute the rate of compensation was to be retained for 2 years but the grade was reduced and if he was not repromoted during the period of



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retained compensation his salary would have been reduced at the completion of such period.

Copies of two recent decisions which in effect confirm 43 Comp. Gen. 701, supra, are enclosed.

As you point out, the relative effect of demotion and repromotion is not similar for employees in different within-grade steps. Those differences apparently result from the rules established in 5 C.F.R. 531.501-517 pertaining to salary retention upon demotion. It is noted, however, that the Civil Service Reform Act of 1978 (P.L. 95-454) approved October 13, 1978, made some changes in the Civil Service laws regarding retained grade of employees who are demoted. See 5 U.S.C. §§ 5361-66 (P.L. 95-454, section 801). Applicable OPM regulations have not been issued nor has the Comptroller General received a case for decision under the law as revised. It may be that OPM will be able to formulate regulations which alleviate the perceived inequities in these situations.

Sincerely yours,

Edwin J. Monsma

Edwin J. Monsma
Assistant General Counsel

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